UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1998/NGO/24
3 August 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
Item 12 (c) (i) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE

IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 July 1998]

GE.98-13477 (E)

Sanctions and human rights

Introduction

1. On 28 August 1997 the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1997/35 entitled "Adverse consequences of economic sanctions on the enjoyment of human rights", invoking the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Geneva Conventions of 1949 and their two Additional Protocols in expressing its concerns about sanctions. The resolution commits the Sub-Commission to addressing this question at its 1998 session.

2. The Sub-Commission's attention to sanctions is based in part on many statements made in its general debates and those of the United Nations Commission on Human Rights by Governments and non-governmental organizations, statements made by special rapporteurs, documents and reports by a number of United Nations specialized agencies, and on its own concerns about the humanitarian situation in Iraq as expressed in annual decisions since 1990.

3. International Educational Development/Humanitarian Law Project (IED/HLP) welcomes this initiative. To further the Sub-Commission's work we have prepared a memorandum analysing sanctions, blockades and embargoes in the light of human rights and humanitarian law and providing a description of all sanctions currently imposed and their adverse consequences. This statement summarizes that memorandum.

Sanctions and international law

4. The Charter of the United Nations has many provisions relevant to sanctions.* Sanctions could be a collective measure taken to prevent and remove threats to peace, to suppress acts of aggression or to bring about settlement of disputes as provided in Article 1, paragraph 1. Sanctions could also be a means of realizing friendly relations or international cooperation to solve international problems and to promote human rights. Imposition of sanctions by the United Nations falls under the authority of the Security Council as provided by Articles 41 and 42.

5. Limitations to sanctions are not set out in Articles 41 and 42, but other sections of the Charter clearly establish limitations. For example, Article 1, paragraph 1, requires that measures taken to maintain international peace and security must be "in conformity with the principles of justice and international law". In this sense, sanctions that are unjust or that constitute aggression may not be imposed. Likewise, sanctions that do not effectively help to maintain peace may also not be imposed.

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* Hereinafter, the term "sanctions" means also blockades and embargoes unless specifically distinguished.

6. Article 1, paragraph 2, limits sanctions by providing that all measures undertaken in the interest of friendly relations must be based on "respect for the principle of equal rights and the self-determination of peoples ...". Article 1, paragraph 3, necessarily limits sanctions by stating that one of the purposes of the United Nations is to promote and encourage respect for human rights. Article 1, paragraph 4, limits sanctions by requiring that United Nations action be in harmony with other United Nations or national action. Action cannot be taken if it results in unequal treatment of countries.

7. Article 55 of the Charter also limits sanctions in its requirement that United Nations actions may not lower economic standards, create health problems, or be in any way detrimental to the observance of human rights.

8. Article 52 of the Charter limits sanctions that may be imposed regionally or by a group or a single Government by mandating that regional arrangements and activities be in conformity with the "Purposes and Principles of the United Nations". A sanctions regime imposed unilaterally or by a regional body must conform to all requirements for such sanctions inherent in the Charter, including conformity with the principles of justice and international law.

9. A sanctions regime that on its face violates the Charter would have to be viewed as void ab initio for all States Members of the United Nations. Presumably, the States Members of the United Nations, individually and in concert with other Member States, would have to take relevant action, including censure of the regional body or Government(s) imposing such sanctions.

10. Treaty-based and customary humanitarian law also provides for limitations on sanctions. The Martens clause (eighth preambular paragraph of the Hague Convention of 1907) limits sanctions by citing the principles of civilized nations, the laws of humanity and the dictates of the public conscience. (The Martens clause is repeated in all four of the Geneva Conventions of 1949 and in Protocol Additional I.) Humanitarian law requires free passage of medical supplies and religious objects as well as protection of items indispensable to the survival of the civilian population. Sanctions may not be imposed that limit humanitarian goods or interfere with relief actions.

Remedies for sanctions regimes that violate international law

11. Any human rights body or other relevant body or specialized agency of the United Nations may inform the rest of the United Nations system and the international community as a whole that it views a particular sanctions regime to be in violation or at least causing undue hardships for the civilian population. Article 56 contains a pledge that members of the United Nations must take action to achieve the purposes established by Article 55. Accordingly, Member States alerted by human rights bodies, specialized agencies or non-governmental organizations that an actual or proposed sanctions regime would violate Article 55 must overtly object. If the sanctions regime is nevertheless imposed or continued, Member States must seek all available means to annul it, and may have the legal right to defy it. If

a United Nations official (including a special rapporteur of the Commission or members of the Sub-Commission) raises concerns about possible or actual violations of Article 55 or humanitarian law, the United Nations as a whole and individual Member States must investigate and eliminate all sanctions or parts of sanctions regimes that result in violations or undue suffering. Pressing issues of a humanitarian nature (food, shelter, medicine and medical care for victims) must be addressed and provided for.

12. The International Court of Justice is the final arbiter of whether a sanctions regime is in violation of the Charter or other norms of international law. A Member State or group of Member States that challenge a particular sanction may seek remedy in the relevant bodies such as the Sub-Commission, the Commission, the Economic and Social Council, the General Assembly or the Security Council. If in spite of express concerns the sanctions regime in question is not eliminated or modified, then the members of the Sub-Commission or member Governments of the Commission may seek an opinion from the International Court of Justice. The United Nations as a whole and the Security Council in particular must comply with such an opinion. A State that has sanctions imposed upon it may also challenge these sanctions at the International Court of Justice.

ANNEX

United Nations-imposed sanctions

Iraq - Economic sanctions under Security Council resolution 661 (1990), called the most comprehensive, rapidly applied sanctions regime in the history of the United Nations, provided for sanctions until the Iraqi Government withdrew from Kuwait. A comprehensive arms embargo was imposed by Security Council resolution 687 F to obtain a comprehensive prohibition against Iraq's possession of nuclear, chemical and biological weapons and ballistic missiles with a range greater than 150 km, and all related technology, materials and equipment. Serious concern has been raised by WHO, UNICEF, the Secretary-General and FAO/WFP about unreasonable denials of essential food and medicine under the sanctions regime. The Iraqi civilian population, especially children, are at grave risk due to extreme deprivation of food and medicine. It has been estimated that over 1 million children have died due to sanctions.

Liberia - An arms embargo was imposed in 1992 on all deliveries of weapons by Security Council resolution 788 (1992) due to the deteriorating situation of civil war. Security Council resolutions 1083 (1996) and 1116 (1997) stressed the obligation of all States to comply with the embargo.

Libyan Arab Jamahiriya - Diplomatic, air and arms embargo was imposed in 1992 by Security Council resolution 748 A (1992) for Libya's failure to comply with Security Council resolution 731 requesting the extradition of suspects in the air bombing of a Pan Am flight. Security Council resolution 883 (1993) freezes Libyan Government funds and bans the exportation of oil equipment to Libya. In 1997 formal requests were made by the Governments of Egypt, Kenya and Guinea-Bissau to eliminate the sanctions; the Department of Humanitarian Affairs was asked to investigate. Concerns about impact of sanctions on employment were raised by NGOs.

Sierra Leone - A petroleum and arms embargo and travel restrictions were imposed in October 1997 by Security Council resolution 1132 (1997) following sanctions imposed by the Economic Community of West African States (ECOWAS) against the military junta established after a coup d'état overthrew President Kabbah. Provisions were made for exemptions at the request of the democratically elected Government, the United Nations and humanitarian agencies. Security Council resolution 1171 (1998) extends the exemptions to the sale or supply of arms and related material to the Military Observer Group of the Economic Community of West African States (ECOMOG). Sanctions were lifted in June 1998 (Security Council resolution 1181) on restoration of the Kabbah Government.

Somalia - An arms embargo was imposed by Security Council resolution 733 (1992).

Sudan - Diplomatic sanctions were imposed by Security Council resolution 1054 (1996) for failure to comply with Security Council resolution 1044 (1996) requiring that suspects in the attempted assassination of President Mubarak of Egypt be extradited. A conditional air embargo authorized by Security Council resolution 1070 (1996) was deferred pending examination of the humanitarian effects.

Federal Republic of Yugoslavia - The Security Council re-established an arms embargo by its resolution 1160 (1998) in order to limit the conflict in Kosovo.

UNITA (Angola) - An arms and oil embargo was instituted against the National Union for the Total Independence of Angola (UNITA) by Security Council resolution 864 B (1993) for its failure to accede to United Nations-supervised elections of September 1992. Security Council resolution 1173 B (1998) imposes an international freeze of UNITA's financial assets and other economic sanctions. Provision is made for humanitarian exceptions.

Rwanda - An arms embargo instituted by Security Council resolution 918 B (1994) due to the internal conflict and massive human rights violations was lifted for the Rwandan Government in September 1996 (Security Council resolution 1011 (1996)), but remains in effect for non-government forces (such as the Army for the Liberation of Rwanda - ALIR).

Sanctions imposed by regional organizations or individual countries

Myanmar - Economic sanctions were imposed by the United States in 1996. Exceptions were provided for humanitarian assistance, anti-drug-trafficking assistance and promoting human rights and democratic values.

Burundi - Broad economic blockade sanctions have been imposed by the Governments of Zambia, the United Republic of Tanzania, Kenya, Uganda, Rwanda, Zaire and Ethiopia, Security Council resolution 1072 A (1996) expressed "strong support for the efforts of regional leaders". In April 1998 the International Crisis Group argued that the embargo had evolved into a "personal feud" with negative effects that had come to outweigh any positive effects it may have had. The policy risked hindering the process of internal dialogue, fuelling extremist elements in Burundi society and contributing to a dangerous destabilization of the situation. The Commission's Special Rapporteur warned of "disastrous effect on the general population of Burundi" (E/CN.4/1998/72, para. 80). The World Food Programme began an emergency food airlift in March 1998.

Cuba - A unilateral embargo by the United States has been in place since 1960, amended by the Helms-Burton Act and others, and widely criticized as being in violation of the Charter of the United Nations and human rights. General Assembly resolution 52/10 of 12 November 1997 called on States to repeal laws such as the Helms-Burton Act because of "their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation". UNICEF claims the embargo adversely affects children (see A/52/342 and Add.1 and Corr.1).

Islamic Republic of Iran - Economic sanctions have been imposed by Western European countries and the United States. In 1996, the United States passed the Iran and Libya Sanctions Act allowing economic sanctions against foreign firms.

Libyan Arab Jamahiriya - An air blockade and additional economic sanctions have been imposed by Western European countries and the United States. United States law (Iran and Libya Sanctions Act 1996) allows for economic sanctions against foreign firms.

Federal Republic of Yugoslavia - In March 1998 a new investment ban was imposed against Yugoslavia, initiated by the Contact Group (United Kingdom, United States, Germany, Italy, France, Russian Federation) created to monitor the Dayton peace accord. A ban on Yugoslav airline flights in Europe was imposed by the European Union in June, 1998. United States financial sanctions were imposed in June, freezing the assets of the Federal Republic, blocking transactions and new investments.